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No. 01-1118, 01-1119

SEP 17

IN THE

Supreme Court of the United States

JOSEPH SCHEIDLER, *et al.*,

Petitioners,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., *et al.*,

Respondents.

OPERATION RESCUE,

Petitioner,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., *et al.*,

Respondents.

On Writs of Certiorari to the United States Court of Appeals for the Seventh Circuit

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BRIEF OF THE FEMINIST MAJORITY FOUNDATION, PLANNED PARENTHOOD FEDERATION OF AMERICA, INC., CENTER FOR REPRODUCTIVE LAW & POLICY, MEDICAL STUDENTS FOR CHOICE, NATIONAL ABORTION FEDERATION, PHYSICIANS FOR REPRODUCTIVE CHOICE AND HEALTH, AND VOTERS FOR CHOICE AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTERESTS OF AMICI CURIAE

Amici Curiae[1] are organizations dedicated to the protection and expansion of women's reproductive health care. Through the provision of reproductive health care services, education, direct clinic assistance, security training, organizing, advocacy, lawsuits, training of physicians, and legislation our groups have helped reduce the level of violence faced by health care providers and the women who are their patients and increase women's access to quality reproductive health care.

Feminist Majority Foundation ("FMF") is a non-profit organization dedicated to eliminating sex discrimination and to the promotion of equality, women's rights, and safe access to abortion and birth control. FMF actively pursues legal protection for reproductive health services and provided legal counsel for Respondent Women's Health Center in *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753 (1994).

FMF runs the largest clinic defense project in the nation and has been active in defending clinics throughout the country from attacks orchestrated by the Petitioners. FMF provides security assessments and training for clinic staffs, operates a clinic violence hotline and facsimile warning system, tracks incidences of violence against women's health care clinics, and conducts a yearly social science survey of the extent of violence against abortion providers. The President of FMF, Eleanor Smeal, was the President of the National Organization for Women (NOW) when NOW began this litigation.

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[1] Pursuant to Rule 37.6, counsel for amici state that no counsel for a party authored this brief, in whole or in part, and that no person, other than amici, their members, or their counsel, made a monetary contribution to the preparation and submission of the brief. All parties have consented to the filing of this brief.

Planned Parenthood Federation of America, Inc. (PPFA), a New York not for profit corporation, is the world's oldest and largest voluntary reproductive health care organization. PPFA provides leadership to 132 autonomous affiliates that manage 900 health centers in 47 states and the District of Columbia. PPFA affiliates provide education and medical services to nearly five million women and men a year, including contraceptive services and counseling, cancer screening and evaluation, emergency contraception, HIV testing, infertility treatment, medical and surgical abortion, pregnancy testing and counseling, sexuality education, testing of sexually transmitted disease and infections, prenatal care and sterilization. PPFA's affiliates, staff, and patients have been the targets of hundreds of illegal attacks by anti-abortion extremists – attacks ranging from murder and arson, to illegal invasions, butyric acid attacks, faked anthrax attacks, etc. PPFA and its affiliates are committed to taking every possible step within the bounds of the law to protect the safety of their patients, staff, and facilities and thus are profoundly concerned that the ruling in this case be affirmed.

Center for Reproductive Law & Policy (CRLP) is a non-partisan, non-profit group that uses advocacy both domestically and internationally to ensure access to reproductive rights for all people. Since its founding in 1992, CRLP has either represented directly or filed amicus curiae briefs in every major case involving reproductive rights and health issues before the United States Supreme Court.

Medical Students for Choice is an advocacy organization with nearly 7,000 medical student members in medical schools across the U.S. and Canada. Our mission is to ensure that women receive the full range of reproductive health-care by working to make reproductive health-care a part of standard medical education and residency training. One of the greatest barriers to safe and legal abortion today is the absence of trained providers.

Our medical student members, as many physicians before them, face realistic fears for their personal safety and the safety of their families as a consequence of providing abortion care to women. The deliberate and strategic targeting of medical providers by these defendants is responsible for that fear. It is for that reason that we are amicus curiae in this case.

National Abortion Federation (NAF), a private-non-profit organization founded in 1977, is the professional association of abortion providers in the United States and Canada. Its members include over 350 non-profit and private clinics, women's health centers, Planned Parenthood facilities, and private physicians' offices in 47 states. NAF's members provide over half of the abortions performed in the United States each year. NAF's mission is to promote and enhance the quality of abortion care, ensuring that abortion remains safe, legal, and accessible.

Since its founding, NAF has worked to end anti-choice violence against providers and their patients. Through its Clinic Support program, NAF acts as an advocate for provider protection with all levels of law enforcement; issues timely information alerts and updates about anti-choice violence; maintains statistics on anti-choice violence and a data bank on militant anti-choice groups and individuals; and conducts on site security assessments and training for clinic staff to assist with safety concerns. The extreme harassment employed by anti-choice activists not only places NAF members, health care providers, and patients in danger, but also jeopardizes women's safe access to abortion services.

Physicians for Reproductive Choice and Health (PRCH) is the voice of pro-choice physicians in the United States. A national non-profit, PRCH was created in 1992 by a group of physicians committed to the ideal that every pregnancy should be a wanted pregnancy and that women should have the full range of medical options available when

considering whether to have a child. We work to keep abortion safe, legal, and accessible; encourage and educate around new medical reproductive technology and methods; and promote programs and public education to reduce unintended pregnancy.

The mission of PRCH is to enable concerned physicians to take a more active and visible role in support of universal reproductive health. PRCH is committed to ensuring that all people have the knowledge, access to quality services, and freedom of choice to make their own reproductive health decisions. Staffed since 1995, the organization now has more than 5,000 physician and non-physician supporters, with headquarters in New York and programs in California and Pennsylvania.

PRCH works to support abortion providers and other pro-choice physicians who are faced with violence and harassment because of their support of a legal right and the most common surgical procedure in the United States. Concerned about the declining number of available abortion providers, PRCH offers education, advocacy, and support to pro-choice physicians.

Voters for Choice (VFC) is a national organization dedicated to maintaining the legality of abortion, and combating violence around reproductive health care facilities that impairs the right of access to abortion services. VFC's mission is to educate the public about abortion-related issues, advocate to maintain and solidify women's right to choose, and promote the right of choice through the electoral process. VFC is non-partisan and supports viable Democratic, Republican, and Independent pro-choice candidates through financial contributions, endorsements, and campaign services.

SUMMARY OF ARGUMENT

In the mid-1980's, Joseph Scheidler and his associates began a campaign to terrorize abortion providers, women's health care clinic staffs, and patients. The operation was led by the Pro-Life Action Network (PLAN), an association of anti-abortion extremists' groups. PLAN orchestrated forcible violent blockades and invasions of women's reproductive health care clinics throughout the country. In response to this countrywide onslaught, the National Organization for Women and two clinics, the Delaware Women's Health Organization, Inc. and the Summit Women's Health Organization, Inc., sought a nationwide remedy.

As the Seventh Circuit Court of Appeals correctly concluded, the Petitioners' attacks on clinics and patients were classic extortion—terror used to frighten people into giving up their business rights. The Seventh Circuit also found that the extent of the Petitioners' attacks required a nationwide injunction so that the safety of women's health care facilities would be enhanced. This Court should affirm those decisions.

The first section of this brief reviews the history and extent of violence against women's reproductive health care clinics. The brief then explains the detrimental impact this domestic terrorism has on women's access to health care. It discusses the necessity of the nationwide injunction issued in this case given the nationwide assaults orchestrated by the Petitioners against women's health care clinics. Finally, it focuses on the second question presented, showing how the Petitioners violated the Hobbs Act through their attacks on clinics and patients by obtaining the property of clinics and patients.

ARGUMENT

I. THE NATIONWIDE CAMPAIGN OF TERROR AGAINST ABORTION PROVIDERS, STAFF, AND CLINICS LIMITS WOMEN'S ALREADY RESTRICTED ACCESS TO REPRODUCTIVE HEALTH CARE.

Reproductive health care providers throughout the country have been targets of domestic terrorism by anti-abortion extremists. The Petitioners operated within this climate of violence and helped create parts of it. The violence against women's health care facilities harms women by reducing the number of women's health care clinics and staff.

A. Reproductive Health Care Providers Are the Targets of Domestic Terrorism.

Women's health care providers have been under attack for decades because of the services they provide. Since 1991, eight abortion providers or staff have been murdered; twenty have been wounded, and clinics have suffered massive physical damage.

In 1991, in Springfield Missouri, a masked gunman shot Claudia Gilmore and a second person in the clinic where Ms. Gilmore worked. *Gunman at Abortion Clinic Wounds Two in Springfield*, St. Louis Post Dispatch, December 29, 1991, at 3A. Also in 1991, in Houston, Texas, Dr. Douglas Karpen was shot and wounded in a parking garage near his clinic. Jennifer Lenhart, *Under Seige: At Abortion Clinic, Tension Comes with the Job,* Houston Chronicle, January 15, 1995, A1. In Wichita, Kansas in 1993, Dr. George Tiller was shot at point blank range in his

car as he raised his arms to protect himself. Rachelle Shannon was sentenced to eleven years for the crime. The Army of God Manual, a how-too primer on violence against reproductive health care clinics, was discovered in Shannon's yard. Judy Lundstrom Thomas, *Manual Instructions Anti-Abortionists on Bomb-Making,* The Times-Picayune, October 2, 1994, A15.

In Pensacola, Florida in 1993 after the publication of a Wild West-style "UN-WANTED" poster, Dr. David Gunn was shot and killed at the rear entrance of Dr. Wayne Patterson's clinic while Rescue America[2] staged a protest at the front the clinic. Michael Bates, *Woman Arrested in the Wounding of Abortion Doctor,* Associated Press, August 20, 1993. Michael Griffin was sentenced to life in prison for this killing. The same year, in August in Mobile, Alabama, Dr. Wayne Patterson himself was shot and killed, again after the publication of an "UN-WANTED" poster. Cindy West, *Shooting: Protest, Random Violence?*, Pensacola News Journal, August 23, 1993, A1. Law enforcement identified this crime as a robbery-based murder, rather than abortion-related, even though Dr. Patterson's money was not taken. Debbie Howlett, *Courage or Crime? Incidents, Reports Spark FBI Probe,* USA Today, January 10, 1995, 1A.

Florida was the sight of a double murder in 1994. Dr. John Bayard Britton and volunteer escort Lt. Col. James Barrett were shot and killed in the driveway of a clinic. Paul Hill was sentenced to death for this crime. June Barrett, the wife of Lt. Col. Barrett, was shot and wounded in the attack. *Hill Sentenced to Death in Clinic Killings,* The Baltimore Sun, December 7, 1994, A1.

After the murders of Dr. Gunn, Dr. Britton, and Lt. Col. Barrett, a group of anti-abortion extremists circulated and signed "justifiable homicide" petitions. The one signed

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[2] Donald Treshman, the founder of Rescue America (Bates, *supra*) was a regional director of PLAN. Trial Transcript p. 3990, Testimony of Joseph Scheidler.

after the murders of Dr. Britton and Lt. Col. Barrett stated in part:

> We, the undersigned, declare the justice of taking all godly action necessary, including the use of force to defend innocent human life (born and unborn). We proclaim that whatever force is legitimate to defend the life of a born child is legitimate to defend the life of an unborn child.
>
> We declare and affirm that if in fact Paul Hill did kill or wound abortionist John Britton and accomplices James Barrett and Mrs. Barrett, his actions are morally justified if they were necessary for the purpose of defending innocent human life. Under these conditions, Paul Hill should be acquitted of all charges against him.

United States v. McMillan, 946 F. Supp. 1254, 1263-1264 (S.D. Miss. 1996). Signers of this "justifiable homicide" petition include leaders of organizations involved in PLAN, including Andrew Burnett (a regional Director of PLAN) (Trial Transcript p. 3990, Testimony of Joseph Scheidler; *Planned Parenthood of the Columbia/Willamette, Inc., v. American Coalition for Life Activists*, 41 F. Supp. 2d 1130, 1140 (1999), *aff'd in part*, 290 F.3d 1058 (9th Cir. 2002) (Burnett signed petition)) and Roy McMillan, an organizer of a PLAN conference. Plaintiffs' Ex. 608; *McMillan*, 946 F. at 1263 (McMillan signed petition).

Also in 1994, Shannon Lowney and Leanne Nichols, staff members at two neighboring clinics in Massachusetts, were shot and killed at the reception desks of their respective clinics. Five other people were wounded in these attacks. John Salvi, the man who committed these attacks, died in prison. David Weber, *2 Years Later, Abortion Debate Rages; Anniversary of Salvi's Clinic Rampage*, Boston Herald, December 31, 1996, 4.

In 1996 in New Orleans, Donald Cooper stabbed Dr. Calvin Jackson 15 times outside his clinic. Cooper was then arrested at a Baton Rouge clinic. Cooper was charged with attempted second degree murder. *Man Booked in Stabbing of Abortion Clinic Doctor*, The Advocate (Baton Rouge, Louisiana), January 4, 1997, 2B. In 1997, in Atlanta, Georgia, seven people were injured in two bombings at the Northside Family Planning Clinic. Donald Plummer, *Olympic Blast Still Haunts Officials*, Atlanta Journal and Constitution, February 23, 2002, 9A. The second bomb detonated an hour after the first, targeting law enforcement officials. *Id.* The Army of God has claimed credit for these attacks. Jack Warner, *Rudolph Indicted in Four Bombings*, Atlanta Journal and Constitution, November 16, 2000, 7C Fugitive Eric Robert Rudolph was charged and remains on FBI's Ten Most Wanted list. *Id.* Also in 1997, in Rochester, New York, an unnamed doctor in his home was shot and wounded by a sniper with a high powered rifle. James Charles Kopp remains a primary suspect.[3] Dan Eggen, *Murder Suspect Arrested in France; Abortion Foe Held in Doctor's Death*, Washington Post, March 30, 2001, A1.

In 1998, Dr. Barnett Slepian was shot and killed by a sniper; James Charles Kopp has been indicted for this murder. *Id.* Also in 1998, off-duty police officer Robert Sanderson was killed in a bomb explosion at New Woman, All Women Clinic; clinic nurse Emily Lyons was maimed in the attack. Warner, *supra*. The Army of God has claimed credit for the bombing, and fugitive Eric Robert Rudolph has been charged. *Id.*

From 1977 until 1999 (the year the injunction in this case was issued), as reported to the National Abortion Federation, 161 women's health care facilities were the

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[3] Three doctors in Canada have also been shot in a sniper-like manner; James Kopp is a suspect in these shootings as well. Eggen, *supra*.

target of arson; 40 were bombed; and 77 clinics were the targets of attempted bombings or arsons. National Abortion Federation, Chronological History of Arsons and Bombings, *at* www.prochoice.org.[4] Together, the arsons and bombings have caused close to 15 million dollars in property damage. *Id.* This accounting does not include the cost of increased security, insurance, and emotional damages.

An annual national social science survey of abortion providers found that in 1993 50% of clinics surveyed had experienced severe violence.[5] *2000 Feminist Majority Foundation National Clinic Violence Survey Report*, 2001, 5 *at* http://feminist.org/research/cvsurveys/clinic_survey2000.pdf (2000 FMF Survey). In 1993, the survey found that 16.9% of clinics had suffered blockades and 14.6% had been invaded. *1993 Feminist Majority Foundation National Clinic Violence Survey Report*, 1993, *at* http://www.feminist.org/research/ cvsurveys/93violence.html. From 1977-1999, there were over 600 clinic blockades and over 300 clinic invasions. National Abortion Federation, Incidences of Violence and Disruption Against Abortion Providers in the U.S. and Canada, *at* www.prochoice.org.

National efforts by women's rights supporters, including this lawsuit and the passage of the Freedom of Access to Clinic Entrances Act (FACE), 18 U.S.C. §248, have decreased some of the violence faced by clinics. In 1999 and 2000, 20% of clinics surveyed reported being the

[4] These incidences include only those reported directly to the National Abortion Federation. The actual numbers are even higher.

[5] "Severe Violence" is defined as "blockades, invasions, bombings, arsons, chemical attacks, stalking, physical violence, gunfire, bomb threats, death threats, and arson threats." FMF 2000 Survey at 5. The Feminist Majority Foundation's clinic violence survey sends questionnaires to all facilities it can identify as providing abortion services in the United States. In 2000, surveys were sent to 798 providers; 361 responded for a response rate of 45%. Analysis on the received data is conducted using SPSS (Statistical Package for the Social Sciences).

target of extreme violence. 2000 FMF Survey, *supra*, at 5. In 1999, 6% of clinics reported that they had been the targets of blockades and 3% reported invasions. *1999 Feminist Majority Foundation National Clinic Violence Survey Report*, 1999, at www.feminist.org/research/cvsurveys/1999/1999ClinicSurvey.htm. In 2000, 5% of clinics reported that they had been blockaded and 1.4% reported invasions. FMF 2000 Survey at 7.

B. Unchecked Violence Further Restricts Women's Already Limited Access to Reproductive Health Care.

Violence and harassment of abortion providers and staff limit women's access to reproductive health care. According to a Senate Report on FACE:

> Some providers have succumbed to the intimidation and threats. At least three physicians in Dallas stopped performing abortions in 1992 as a result of pressure by anti-abortion groups. In early 1993, after receiving death threats, two doctors stopped working at an abortion clinic in Melbourne, FL. And since Dr. Gunn was shot in March 1993, at least eight more doctors have stopped offering abortion services.

Freedom of Access to Clinic Entrances Act of 1993. S. Rep. No. 103-117, at 17 (1993).

In 1993, after the murder of Dr. Gunn, 23% of clinics surveyed had staff or physicians resign because of violence or harassment. 2000 FMF Survey, *supra*, at 13. In 1999, after the murder of Dr. Barnett Slepian, 10% of clinics surveyed reported that a physician or other staff had quit their jobs as result of anti-abortion violence, harassment, or intimidation. *Id.* In 2000, resignation of staff members was much more likely at clinics experiencing high levels of violence. *Id.* (15% of clinics experiencing high violence

lost staff; 2% of those not experiencing such violence lost staff).

The limitations of services because of violence further curtail women's access to abortion, making it a right for some in theory only. As of 1996, only 14% of U.S. counties had abortion providers. Alan Guttmacher Institute, *Facts in Brief, Induced Abortion*, 2002, *at* http://www.agi-usa.org/pubs/fb_induced_abortion.html. Between 1992 and 1996, the number of abortion providers decreased by 14%. *Id.* For example:

STATE	% of Counties without Abortion Provider	Number Change 1992-1996	% Change 1992-1996
Iowa	96%	-3	-27%
Missouri	96%	-2	-17%
North Carolina	74%	-27	-31%
North Dakota	98%	0	0[6]
Tennessee	93%	13	-39%

Stanley K. Henshaw, *Abortion Incidence and Services in the United States 1995-1996,* Family Planning Perspectives Nov.-Dec.1998, Table 5 *at* http://www.guttmacher.org/pubs/journals/3026398.html.

The shrinking numbers of abortion providers, coupled with other laws that restrict abortion services[7],

[6] North Dakota did not gain or lose any abortion providers from 1992-1996. The number of abortion providers in North Dakota during that time stayed consistent: 1.

[7] Waiting periods and in person counseling requirements of some states mean that women have to visit a clinic twice, again increasing the cost and hardship. 16 states have laws requiring a waiting period ranging from 12 to 24 hours between counseling and abortion. National Abortion and Reproductive Rights Action League Foundation *Who Decides? A State-By-State Review of Abortion and Reproductive Rights* 17 (2002).

create an exceptionally difficult burden for poor women. In addition to the cost of an abortion (which, in most states in most situations is not covered by public funding or insurance[8]), women must budget for traveling to and from the clinic and taking time off from work. In 1992 (when, as noted, the number of abortion providers was higher than in 1996) 8% of women traveled more than 100 miles to get an abortion and 16% traveled 50-100 miles. Stanley K. Henshaw, *Factors Hindering Access to Abortion Services*, Family Planning Perspectives, March/April 1995 *at* www.guttmacher.org/pubs/journals/2705495.html. Conversely, the smaller number of providers means that some doctors have to travel from state to state in order to make sure that women's access to abortion is maintained. At trial, Dr. Susan Wicklund related that she would fly from Wisconsin to Fargo, North Dakota. Dr. Wicklund's trips to Fargo were necessary because "it's a very remote area. It's the only clinic in North Dakota, and they were having a real hard time finding physicians to keep it open." Joint Appendix at 115, Testimony of Dr. Susan Wicklund.

When a clinic is closed because of anti-abortion terror tactics, some women lose their only chance to have an abortion. In these cases, anti-abortion extremists successfully deny a woman the right the Constitution guarantees her and force her to accept the extremists' decision of what her future should be. *See Planned Parenthood of Southeastern Pennsylvania v. Casey,* 505 U.S. 833, 928 (1992) (Blackmun, J., concurring in part and

[8] In 28 states (and the District of Columbia) public funding for abortion is limited to cases of life endangerment, rape, and incest. *Who Decides?, supra,* note 7, at 20.

dissenting in part) (restrictions on abortion deprive a woman of "basic control of her life").

For other women, a closed clinic means waiting longer for an abortion. At trial, Ms. A, a woman carrying a fetus with a condition incompatible with life testified how she traveled to Wichita, Kansas and PLAN's forcible blockade of the clinic there made her postpone her visit for three days. Trial Transcript p. 768, 774, Testimony of Ms. A. For some, the delay increases the possibility of complications and decreases the chances that a provider will be available for the abortion. *See, e.g.*, Henshaw, *Factors Hindering Access to Abortion Services*, *supra*, ("[t]he later in gestation an abortion is performed, the more cervical dilation is needed, the more complex the procedure and the greater the risk of complications; not all providers choose to perform these more difficult procedures"). In those situations where the clinic remains open but the patient has to survive a gauntlet of abuse and harassment, several courts have noted the adverse medical effects on patients. *See, e.g., Madsen v. Women's Health Center*, 512 U.S. 753, 758 (1994) (according to clinic doctor, patients "manifested a higher level of anxiety and hypertension causing those patients to need a higher level of sedation to undergo the surgical procedures, thereby increasing the risk associated with such procedures"); *U.S. v. Scott*, 958 F. Supp. 761, 767 (D.Conn. 1997) ("pushing, blocking, and otherwise interfering with a patient's access can increase the patient's stress level, and thereby increase the risks of a subsequent abortion procedure"); *Operation Rescue v. Planned Parenthood*, 975 S.W. 2d 546, 551 (Tex. 1998) (patients entered "visibly shaken, crying, nervous. Physicians reported increased respiration, heart rate, and blood pressure").

When anti-abortion violence closes down a clinic, it also has the effect of shutting down the only source of any type of reproductive health care for many women. Clinics that provide abortions also provide a wide range of health

related services for women. 2000 FMF Survey, *supra*, at 4 (98% of clinics surveyed provide birth control[9], 91% provide pregnancy counseling, 88% provide emergency contraception, 83% provide testing for sexually transmitted diseases, 77% provide adoption counseling and referrals, 75% provide cancer screening, 67% provide services relating to menopause, 67% provide HIV/AIDS testing, and 22% provide pre-natal care). For example, the Blue Mountain Clinic in Missoula, Montana, offered "prenatal care and delivery, childhood immunizations, diagnosis and treatment of sexually transmitted infections, contraceptive services and first trimester abortions." S. Rep. No. 103-117, *supra*, at 5-6. Seventy percent of the patients in the prenatal program were Medicaid patients; some patients traveled as far as 120 miles to receive health care. In March 1993, the clinic was entirely destroyed by arson. As a result, the clinic was able to serve only a fraction of its former patients. *Id.*

II. THE NATIONWIDE INJUNCTION IS NECESSARY TO PROTECT CLINICS FROM VIOLENCE.

The nationwide injunction issued in this case pursuant to the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1960 *et seq.*, is a key tool in fighting against the violence that threatens women's health care clinics. This Court should affirm that injunction.

A. PLAN and Operation Rescue Used Violence to Shut Women's Health Care Clinics.

In granting the injunction, the district court listed several acts of violence committed by PLAN and Operation Rescue members, including trapping clinic staff and

[9] Petitioners are also against the use of birth control. Plaintiffs' Ex. 519 p.3.

volunteers against entrances as the volunteers and staff pleaded to be set free; banging on the car of a patient and grabbing her as she tried to enter the clinic; forcibly entering a clinic and destroying medical equipment, tearing down cabinets, and chaining themselves to operating tables; trapping clinic staff and escorts against entrance doors for hours; and assaulting a patient in California who lost consciousness, bled, and had to be rushed to the hospital. *NOW v. Scheidler,* 1999 U.S. Dist. LEXIS 11980, at *6-11 (N.D. Ill. July 28, 1999). As one witness described it:

> Mr. Joseph Scheidler entered our building in Delaware, stormed up the steps with two or three other men with him, came in and stormed his way into our administrator's office, said he was there to "case the joint" and told her that she needed to find another job....I was present at the protest that he had organized and was speaking to the next day, and he had threatened me at that time that he would make sure the clinic was closed down, that he was there to make Delaware and abortion-free state, that our business would be closed, that I would feel the pain and fear that he had announced.

Trial Transcript p. 663-664, 668, Testimony of Susan Hill. The day after Scheidler "cased" the Delaware clinic, "a protest occurred and PLAN members entered the clinic and caused considerable property damage by destroying equipment. PLAN reported this protest in its newsletter and other public relations documents as 'a fun time.'" *NOW v. Scheidler,* 1999 U.S. Dist. LEXIS 11980, at *16.

Similarly, the Court of Appeals found that the "record is replete with evidence of instances in which [the Petitioners'] conduct crossed the line from protected speech into illegal acts, including acts of violence." *NOW v. Scheidler*, 267 F.3d 687, 700 (7th Cir. 2001). The Court of Appeals also noted that one tactic used by the Petitioners was to threaten clinics into shutting down by promising that if the clinic did

not shut down voluntarily, it would be closed through the Petitioners' actions—a classic example of extortion.

In addition, the jury found that the Petitioners had committed 117 acts of force and four acts of violence as part of their campaign to close down women's clinics. The jury specifically stated that *none* of its verdicts regarding extortion were based on blockading alone. 1999 U.S. Dist. LEXIS 11980, at *36 n.6.

B. Injunctions Are a Well Established, Effective Method to Ensure Access to Clinics.

Enjoining violence, blockades, invasions, harassment, and noise are well-established, effective means of protecting women's health clinics. *See, e.g., Madsen v. Women's Health Center,* 512 U.S. 753 (1994). Both clinics and law enforcement officials credit injunctions with limiting violence. In a Government Accounting Office survey, several clinics and law enforcement respondents pointed to injunctions as a reason that anti-abortion violence had been reduced. United States General Accounting Office, *Abortion Clinics, Information on the Effectiveness of the Freedom of Access to Clinic Entrances Act*, November 1998, GAO Report No. GGD-99-2, 13-14.

Other courts faced with the tactics of the Petitioners and their organizations consistently have found that these Petitioners committed violent acts in their attempts to limit women's access to reproductive health care and have issued injunctions against them. In *Operation Rescue v. Planned Parenthood,* anti-abortion extremists "invaded the premises [the clinic] and chained their necks to cement blocks or to fixtures within the clinic. Bottles and rocks were thrown at buildings, and locks were glued shut." 975 S.W.2d at 550. At the time of these invasions and after, several clinics suffered butyric acid attacks. *Id.* The district court enjoined Operation Rescue from "damaging any part of the

[respondent clinics'] premises, facilities and parking lots" and "[t]ouching, physically abusing, intimidating, or harassing any individual attempting to enter or exit the facilities or parking lots of [clinics]." *Id.* at 551.

In *Planned Parenthood of Massachusetts v. Blake*, which included Operation Rescue and PLAN of Arlington as defendants, the tactics used by the defendants, which included invasions and locking themselves to objects within the clinic, were adjudicated threats under Massachusetts law. The court found that the defendants "presented frightening, threatening and impermeable physical obstacles to patients" and that a reasonable woman "seeking an abortion would be threatened, intimidated or coerced by the defendants' conduct." 631 N.E.2d 985, 990-991 (Mass.), *cert. denied*, 513 U.S. 868 (1994). The court enjoined the defendants from obstructing access to clinics and from using force against patients or staff of clinics. *Id.* at 993 n.16.

In *Fargo v. Lambs of Christ*, a case in which Operation Rescue also was a defendant, the evidence included "repeated incidences where protesters invaded the clinic, approached patients or clinic employees in a physically threatening manner, [and] actually struck or restrained patients or employees." 488 N.W. 2d 401, 406 (N.D. 1992). The defendants were enjoined from, among other actions, "harassing, intimidating, or physically abusive conduct." *Id.* at 410-411. In *Northeast Women's Center, Inc. v. McMonagle*, the court found that the defendants[10] "unlawfully entered the Center's facilities on four occasions, and that they illegally and violently interfered with the activities of the Center by means of both intimidation and physical attacks on patients and employees of the Center." 939 F.2d 57, 59 (3d Cir. 1991), *cert. denied*, 493 U.S. 901 (1989). The defendants were enjoined from entering or

[10] The lead defendant in *Northeast Women's Center*, Michael McMonagle, was a member of Operation Rescue. *Roe v. Operation Rescue*, 919 F.2d 857, 871 (3d Cir. 1990).

blockading clinics and from abusing, assaulting, or battering patients and staff. *Id.* at 72. In *City of Atlanta v. Operation Rescue*, the court found that the defendants "exceed[ed] the lawful bounds of activity protected by the First Amendment to the United States Constitution" by "assaulting, tortuously harassing, and following sometime for great distances patients, their families and friends, employees, medical practitioners." Plaintiffs' Ex. 926, *City of Atlanta v. Operation Rescue*, No. D-61462 (Superior Court of Fulton County, March 28, 1990). The court enjoined the defendants from, among other activities, abusing and assaulting clinic workers and staff. Plaintiffs' Ex. 927. In *National Abortion Federation v. Operation Rescue*, the defendants were preliminarily enjoined from "physically abusing persons entering or leaving, working at or using any services at any facility at which abortions are performed." Plaintiffs' Ex. 1077, *National Abortion Federation v. Operation Rescue*, No. CV 89-1181-AWT (C.D. CA) (May 15, 1989).

Attacks against reproductive health care clinics by the Petitioners and their organizations have the potential of dramatically increasing if the injunction in this case is dissolved. Removing the district court's injunction would embolden the lawlessness of PLAN and its associates and would waste precious law enforcement and judicial resources by forcing clinics, prosecutors, and police to bring individual suits to protect individual facilities.

C. The Petitioners' Nationwide Campaign Requires a Nationwide Response.

From its inception, PLAN's nationwide scope set it apart from prior anti-abortion activities; PLAN's goal was to shut down women's clinics across the country. Plaintiffs' Ex. 4A; Trial Transcript p. 976, Testimony of Maureen Burke, Coordinator of NOW's Project Stand Up for Women (describing NOW's monitoring of Scheidler's and PLAN's

activities). In a fundraising letter, Scheidler claimed to have visited 40 cities within the United States, organized the first national "activist" anti-abortion conference, and met with representatives from 34 countries in Rome, Italy. Plaintiffs' Ex. 650. As described by Scheidler in 1984, "I think it was a very good thing for us to get together in Fort Lauderdale and organize this kind of pro-life mafia to work in concert on important activists programs. I think we are obliged to give strong leadership to all the new people who want to get active." Plaintiffs' Ex. 647. The schedule of PLAN's activities in 1984-1985 included numerous nationwide action days. Plaintiffs' Ex. 721.

Similarly, Operation Rescue, a project created by PLAN and a Petitioner in this case, advertised its actions on a national scale and organized attacks throughout the country. S. Rep. No. 103-117, *supra,* at 12-13 (testimony of Attorney General Janet Reno "much of the activity has been orchestrated by groups functioning on a nationwide scale, including, but not limited to Operation Rescue, whose members and leadership have been involved in litigation in numerous areas of the country"; testimony of New York Attorney General Robert Abrams describing litigation brought by his office against Operation Rescue leaders from California, Georgia, Virginia, and elsewhere).

Faced with an unprecedented nationwide attack strategy, the clinics and NOW sought to defend themselves with a nationwide lawsuit. Use of federal law and federal courts for this action was the logical response to the national scope of the attacks and a reflection of the fact that the patchwork of state laws, coupled in some cases by lax or non-existent enforcement of those laws, did not provide adequate coverage for individual clinics or the women who attempted to use them for health care. *Id.* at 13, 19 (David R. Lasso, City Manager and Former City Attorney of Falls Church, Virginia, testifying that attacks against providers have been organized as a national campaign with individuals

coming in from other states, limiting the ability of his jurisdiction to act; Sheriff James T. Hickey of Nueces County, Texas, testifying that because he opposes abortion "he does not believe the law should be enforced against those attempting to stop abortions").

The district court's nationwide injunction must stay in place even though FACE has passed. Indeed, the district court specifically found that Petitioners' blockades and attacks on clinics had continued even with FACE in place. *NOW v. Scheidler,* U.S. Dist. LEXIS 11980, at *51-52 (noting evidence of Petitioners' continued illegal conduct post-FACE, including a butyric acid attack in Florida during Operation Rescue's National Week of Rescue in 1998, blocking clinic doors and physically accosting patients in Chicago in 1996, and, since 1994, weekly "lock and blocks" in Milwaukee where Petitioners locked their bodies to automobiles). The court stated that a nationwide injunction was necessary because of the national scope of Petitioners' activities, Petitioners' willingness to cross state lines to close abortion clinics, and the "blitzkrieg" nature of Petitioners' actions that made obtaining individual FACE injunctions difficult. *Id.* at *52.

III. PETITIONERS OBTAINED PROPERTY AS THOSE TERMS ARE DEFINED BY THE HOBBS ACT.

The Hobbs Act prohibits the use of force or violence or threat of force or violence to obtain property with the consent of the victim. 18 U.S.C. § 1951(a). As found by the jury, the district court, and the Court of Appeals, the Petitioners' acts of violence and force clearly met this definition.

A. The Interests Violated Here Are Property Under the Hobbs Act.

The concept of property employed by the Hobbs Act "includes, in a broad sense, any valuable right considered as a source or element of wealth." *United States v. Tropiano*, 418 F.2d 1069, 1075-1076 (2d Cir. 1969), *cert. denied*, 397 U.S. 1021 (1970) ("property extorted was the right...to solicit business free of territorial restrictions wrongfully imposed by competitors"); *see also United States v. Arena*, 180 F.3d 380, 392 (2d Cir.), *cert. denied*, 531 U.S. 811 (1999) ("[w]hile often the property involved is an existing physical asset, the concept is not limited to tangible things, but includes intangible assets such as rights to solicit customers and to conduct a lawful business."); *Northeast Women's Center*, 868 F.2d at 1359.

Cases applying the Hobbs Act in the context of extortionate attempts to close or interfere in a variety of businesses uniformly conclude that intangible as well as tangible property is covered by the statute. *See, e.g., United States v. Margiotta*, 688 F.2d 108, 134 (2d Cir. 1982), *cert. denied*, 461 U.S. 913 (1983) (extortion in connection with the distribution of insurance commissions and maintaining the position of County Broker of Record); *United States v. Santoni*, 585 F.2d 667, 673 (4th Cir. 1978), *cert. denied*, 440 U.S. 910 (1979) ("property extorted was the right...to make a business decision free from outside pressure"); *United States v. Nadaline*, 471 F.2d 340, 344 (5th Cir. 1972), *cert. denied*, 411 U.S. 951 (1973) (property extorted is unrealized profits from potential customers); *Tropiano*, 418 F.2d at 1075-76 (2d Cir. 1969). Thus, the Hobbs Act is violated in situations where "as a consequence of the extortion the operations of the business have been delayed, obstructed or in some way affected." *United States v. Daley*, 564 F.2d 645 (2d Cir. 1977), *cert. denied*, 435 U.S. 933 (1978). This definition of property easily encompasses the damage done

to the clinics and patients in this case—the deprivation of the right to enjoy the benefit of their lawful business contracts with each other.

The evidence introduced at trial graphically catalogs the Petitioners' multiple violations of the Act. The Petitioners' assaults on clinics in this case had a direct economic impact on the clinics and patients. The most obvious examples of economic impact on the clinics are the destruction of the clinics' medical apparatus and other property, the physical assaults on individuals working for the clinics or seeking to do business with them, the blockings and invasions of clinics, and the threats to carry out such destruction. *See, supra*, § IIA. These actions have the specific purpose of shutting down the operations of ongoing economic entities--i.e, the clinics--by destroying the physical necessities of the operation or by intimidating the clinics' clients and employees. This is precisely the type of activity covered by the Hobbs Act. The clinics have a physical existence, the destroyed material was used in operations that have commercial value, and the damage to facilities will inevitably cause the clinics to forego economically valuable activity. To the extent that the Petitioners' activities resulted in the diminution of economic activity, these activities involve property in its most basic sense--economic exchange of goods and services for money.

Although the damage done by Petitioners to the clinics is the most obvious type of property damage in this case, the damage to the property of the clinic patients is just as real. In one sense, the injuries to clinic patients are equally economic as the injuries to the clinics themselves. The injuries to the clinic patients are the direct consequence of the economic damage to the clinics--indeed, the economic injuries to clinic patients are mirror images of the economic injuries to the clinics. At the same time Petitioners have deprived the clinics of a valuable economic commodity in their right to do business, they also have deprived the

potential clinic patients of the ability to partake in the market for abortion or health care services. The reduction in economic activity, and the impact on "property" in the sense of "the right to contract," is identical with regard to the clinics and their patients. *See, e.g., U.S. v. DeFusco*, 930 F.2d 413 (5th Cir.), *cert. denied*, 502 U.S. 885 (1991) (time and money wasted by prospective customers attending fake prize give-away lost property under mail fraud act).

Even if the clinic patients are viewed as separate claimants entirely divorced from their economic relationship with the clinics, the patients have still been deprived of property, as defined by the Hobbs Act, in the form of their right to contract for medical services like abortion and birth control. Lower courts have regularly analyzed threats to the right to vote in union elections as violations of the Hobbs Act; the property right in these cases is the right of union members to vote freely for the union representative of their choice. "The right of the members of a union to democratic participation in a union election is property; that the right is intangible does not divest it of protection under the Hobbs Act." *United States v. Bellomo*, 176 F.3d 580, 592-93 (2d Cir.), *cert. denied*, 528 U.S. 987 (1999). *See also United States v. Debs*, 949 F.2d 199, 201 (6th Cir.), *cert. denied*, 504 U.S. 975 (1992) (rejecting the argument that the "loss of the opportunity to nominate, vote, assemble, and speak is a deprivation of rights rather than property" and holding that "[i]ntangible property within the meaning of the Hobbs Act includes . . . rights" provided under the federal Labor-Management Reporting and Disclosure Act); *United States v. Local 560 of the Int'l Bhd. of Teamsters*, 780 F.2d 267, 281-82 (3d Cir. 1985), *cert. denied*, 476 U.S. 1140 (1986) ("we conclude that the membership's intangible property right to democratic participation in the affairs of their union is properly considered extortable 'property' for purposes of the Hobbs Act"); *c.f. G-I Holdings, Inc. v. Baron & Budd*, 179 F. Supp.2d 233, 257-258 (S.D.N.Y. 2001) (right to petition

Congress not property under Hobbs Act, but cases involving abortion providers and patients distinguished).

Similar to the inability to participate in full and free union elections, denial of the right to contract for medical services such as abortion and birth control carries with it severe economic consequences. This Court has recognized the personal and economic ramifications for women who are forced against their will to carry a pregnancy to term. In reaffirming the essential holding of *Roe v. Wade*, 410 U.S. 113 (1973), this Court noted in *Casey* that: "[A woman's] suffering is too intimate and personal for the State to insist, without more, upon its own vision of the woman's role, however dominant that vision has been in the course of our history and our culture. The destiny of the woman must be shaped to a large extent on her own conception of her spiritual imperatives and her place in society." 505 U.S. at 852 (1993) (joint opinion of O'Connor, Kennedy, and Souter, JJ.); *Casey*, 505 U.S. at 856 ("[t]he ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives"); *see also*, Alan Guttmacher Institute, *Women and Societies Benefit When Childbearing Is Planned*, Issues in Brief, March 2002, *at* http://www.agi-usa.org/pubs/ib_3-02.html ("being able to plan their families opens new opportunities for women, and women who take advantage of these opportunities have an increased need for family planning"). The economic consequence of becoming pregnant or carrying a pregnancy to term is at least as significant as those stemming from a union election. The use of extortion to deprive a woman of a Constitutionally protected option for dealing with an unwanted pregnancy and other forms of reproductive health care must, therefore, be considered a deprivation of property within the meaning of the Hobbs Act.

B. The Petitioners Obtained Respondents' Property in Violation of the Hobbs Act.

Petitioners' contention that they have not obtained property in violation of the Hobbs Act fares no better than their argument that no property is involved in this case. Petitioners argue that they did not obtain the clinics' and patients' property because Petitioners did not receive the economic value that the Respondents were forced to forego because of Petitioners' illegal conduct. With regard to this issue, the Court of Appeals properly held that "as a legal matter, an extortionist can violate the Hobbs Act without either seeking or receiving money or anything else. A loss to, or interference with the rights of, the victim is all that is required." *NOW*, 267 F.3d at 709 (internal citations and quotations omitted).

Other lower courts agree with the extensive Seventh Circuit precedent on this subject. These courts have held consistently that "lack of an economic motive does not constitute a defense to Hobbs Act crimes." *Northeast Women's Center*, 868 F.2d at 1350. "[W]hether a Hobbs Act defendant personally receives any benefit from his alleged extortion is largely irrelevant for the purpose of determining guilt under that Act." *United States v. Clemente*, 640 F.2d 1069, 1079-80 (2d Cir.) *cert. denied*, 454 U.S. 820 (1981). "The loss to the victim is the gravamen of the offense." *United States v. Lewis*, 797 F.2d 358, 364 (7th Cir. 1986), *cert. denied*, 479 U.S. 1093 (1987).

This is the most logical interpretation of the statutory language. As the Second Circuit Court of Appeals has noted, "[a] perpetrator plainly may 'obtain[ ]' property without receiving anything, for obtaining includes 'attain[ing]. . . disposal of,'; and 'disposal' includes 'the regulation of the fate. . .of something.'" *Arena*, 180 F.3d at 394 (internal citations omitted). Other lower courts uniformly have adopted this interpretation of the Hobbs Act.

See, e.g., United States v. Haimowitz, 725 F.2d 1561, 1577 (11th Cir.), *cert. denied*, 469 U.S. 1072 (1984); *United States v. Rindone*, 631 F.2d 491, 493 (7th Cir.1980); *United States v. Frazier*, 560 F.2d 884, 887 (8th Cir.1977), *cert. denied*, 435 U.S. 968 (1978); *United States v. Jacobs*, 451 F.2d 530, 535 (5th Cir.1971), *cert. denied*, 405 U.S. 955 (1972).

Any other interpretation of the Hobbs Act would reduce the act to covering only the narrowest range of *quid pro quo* extortionate activity. There is no evidence Congress intended such a limited result when it passed the Hobbs Act, and the lower courts consistently have avoided adopting this restrictive interpretation of the statute. This Court likewise should hold that Petitioners have obtained property by causing massive disruptions in the businesses of clinics and thereby harming the interests of the clinics and their patients.[10]

[10] Assuming, *arguendo*, that the Hobbs Act required that the defendant receive an economic benefit from the extortion, the facts of this case meet that standard. PLAN and Operation Rescue routinely relied upon the fact that they or their leaders had helped shut down clinics as a tool for fundraising. For example, a newsletter requesting donations related how Scheidler and other leaders of his group were arrested during blockades of clinics in New York. Plaintiffs' Ex. 165.

CONCLUSION

In a civil and democratic society, violence cannot be used to determine public policy. The ongoing severe violence against reproductive health care providers must be stopped. The Petitioners used a nationwide campaign of force and violence to shut down women's health care clinics. The jury, district judge, and Court of Appeals recognized the Petitioners' actions for what they are—extortion. This Court should affirm that holding and the nationwide injunction.

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